

### **REMARKS**

Following entry of the foregoing amendments, Claims 1, 2, 9, 10, 12, 13, 16 and 17 remain pending in the present application. Various clarifying amendments have been made to the claims.

In the Office Action mailed June 12, 2007, the disclosure and claims as filed were objected to as having improper spacing. A substitute specification including the original claims as filed, reprinted to contain appropriate spacing, is submitted herewith. Applicant respectfully submits that the disclosure and claims are now in a proper format for further examination.

In the Office Action, independent Claims 1 and 16 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,248,110 to Reiley et al.

Applicant respectfully submits that Reiley fails to disclose or suggest Applicant's present claimed invention. Reiley is primarily directed to a vertebroplasty system in which an inflatable balloon is utilized to form a cavity within a vertebral body by compaction of the adjacent cancellous bone. The device is said to also be useful to form cavities in other bones in the body. The inflatable device is thereafter deflated and removed from the cavity, so that the cavity may be filled with bone cement. The bone cement remains in the cavity, while the inflatable device is withdrawn from the patient.

In paragraph 8 of the outstanding Office Action, the Examiner directed attention to expandable device 56 as corresponding to Applicant's present claimed expandable device. However, the expandable device 56 disclosed by Reiley is the cavity creating structure, which is intended for removal from the cavity prior to completion of the procedure. See Reiley at column 8 lines 61 through 66:

The body 56 is preferably left inflated for an appropriate waiting period, for example, 3 to 5 minutes, to allow coagulation inside the vertebral body 26. After the appropriate waiting period, the physician collapses the body 56 and removes it through the outer guide sheath 72 (See Fig. 5L).

To the contrary, the system for treating bone fractures recited in Applicant's Claim 1 is limited to a system in which the expandable device is deployable at the treatment site. Claim 1 recites, *inter alia*, the following:

An expandable device for occupying space within bones, releasably carried by the delivery catheter.

Since the Reiley expandable device is intended to form a compaction cavity within cancellous bone and then be removed, while Applicant's claimed system includes an expandable device which is constructed to be left behind at the treatment site, Applicant respectfully submits that the §102(e) rejection over Reiley should be withdrawn.

Claim 16, as amended, recites, *inter alia* the following:

Said tubular device removably attached to the delivery device; whereby the delivery device expands the tubular device at the treatment site, whereby the delivery device may be removed leaving the expanded tubular device in place to span bone segments.

For at least the reasons discussed above in connection with Claim 1, Applicant respectfully requests that the §102(e) rejection of Claim 16 also be withdrawn.

Independent Claim 10 stands rejected under 35 U.S.C. § 103, as obvious in view of Reiley. However, Applicant respectfully submits that Reiley fails to suggest the invention of Applicant's Claim 10. Claim 10 recites, *inter alia* the following:

Activating a portion of the delivery device in order to cause expansion of the expandable device; and

Hardening a substance within the expandable device after the activating step.

Reiley suggests the use of an expandable device such as an inflatable balloon to compact cancellous bone within an outer cortical bone shell, thereafter removing the expandable device to leave a cavity within the cancellous bone. Applicant respectfully submits that this teaching fails to suggest to one of skill in the art to accomplish the contrary method of leaving the expansion structure in place within the cavity, and then hardening a substance within the expandable device. Rather than accomplish the teaching of Reiley to remove the expandable device from the treatment site, the consequence of Applicant's claimed invention is to decouple the expandable device from the delivery device, and fuse the expandable device in position at the treatment site. Thus, Applicant respectfully submits that Reiley fails to suggest Applicant's present claimed invention.

The presently pending dependent claims also stand rejected variously under §102 and §103, in view of Reiley. Since independent Claims 1, 10 and 16 are believed to be patentably distinguished from Reiley, Applicant respectfully submits that the dependent claims are patentable over Reiley for this reason as well as for the unique features added by those dependent claims.

In view of the foregoing, Applicant respectfully submits that all pending claims in the present application are patentable over Reiley, and Applicant respectfully request that the outstanding rejections be withdrawn.

*No Disclaimers or Disavowals*

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

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**CONCLUSION**

In view of the foregoing, Applicant respectfully submits that all pending claims of the present application are in condition for allowance, and such action is earnestly solicited. If, however, any questions remain, the Examiner is cordially invited to contact the undersigned so that any such matter may be promptly resolved.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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